IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1329 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

==========

ARVINDBHAI THAKARSIBHAI DABHI - Applicant(s)
Versus
STATE OF GUJARAT & 5 - Respondent(s)

==========

Appearance :
MR SOEB R BHOHARIA for Applicant(s) : 1,
MR RC KODEKAR, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
None for Respondent(s) : 2 - 6.

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 20/07/2007

ORAL JUDGMENT

1. By way of this petition, under Article 226 of the Constitution of India, read with Section 482 of the Criminal Procedure Code, the petitioner –

original complainant – injured has prayed for an appropriate order directing the respondents to add Section 307 of the Indian Penal Code in the offence registered with Barwala Police Station, District Ahmedabad *vide* I.C.R.No. 35 of 2007 for the offences punishable under Sections 115, 323, 504, 506(2) and 114 of the Indian Penal Code (for short “IPC”).

2. It is the contention on behalf of the petitioner that though the case is made out under section 307 of the IPC, the Police has deliberately not added the said section and has registered complaint only for the offences punishable under sections 323, 504, 506(2) and 114 of the IPC. It is submitted that looking to the injuries and the weapon (pipe) used, it is a clear case of offence punishable under section 307 of the IPC.

3. Shri R.C.Kodekar, learned Additional Public Prosecutor, under the instructions from Investigating Officer has submitted that the applicant was in the Civil Hospital from 11.06.2007 to 16.06.2007, he was discharged from Civil Hospital on 16.06.2007 and thereafter, he was admitted in the private Hospital on 17.06.2007. Again the applicant was admitted in

another private Hospital on 18.06.2007 and he was in the said Hospital up to 09.07.2007. It is further submitted that at present the investigation is in progress, the certificate from the Sonawala Hospital is yet to be obtained and at present the investigating officer has not formed any final opinion.

4. At this stage, learned Advocate appearing on behalf of the petitioner has submitted that at the time of bail application of the accused, the Investigating officer has made an edoresement that no case is made out under section 326 of the IPC. Shri Kodekar, learned Additional Public prosecutor has submitted that the said endorsement is *prima – facie* opinion at the relevant time on the basis of medical certificate of the Civil Hospital and during the course of investigation, if it is found from the medical certificate of the Sonawala Hospital that there are grave injuries, even the charge for the offence punishable under sections 326 and/or 307 will be added. In view of the fact that investigation is at present in progress, it is not appropriate at this stage to express opinion and interfere in the investigation. Under the circumstances, recording the

statement of the learned additional public prosecutor, present application is disposed of at this stage. However, still if the petitioner is not satisfied, in future, it will be open for him to initiate appropriate proceedings before appropriate forum. Notice discharged.

[M.R.Shah, J.]

satish